IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3129 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANDANLALLM DESAI DECEASED AND HIS LEGAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3129 of 1988

MR KR BRAHMBHATT for Petitioner No. 1-1/6

MR. SOMPURA, AGP, for Respondent No. 1-2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 07/01/2002

ORAL JUDGEMENT

1. Shri Madanlal M. Desai since deceased his heirs and legal representatives have filed this petition under Article 226 of the Constitution of India against the

order dated 18.3.1988 passed by the Health and Family Welfare Department, Government of India. By the said order the Government awarded penalty of reduction in pension by five per cent of the full amount of pension admissible to the petitioner for a period of five years under the said order. The said order was followed by a common Departmental Enquiry implicating five officers including the petitioner instituted under the Government, Health and Family Welfare Department Order No. CHA-1082-352-L-2 dated 21.8.1984. In the departmental Enquiry the Investigating Officer has come to the conclusion that by inaction and negligence on the part of the petitioner the Government incurred a loss of Rs. 84,777.48. That the said charge has been proved against the petitioner. The petitioner retired on 31.3.1986. Thereafter, the Finance Department by its communication dated 22.5.1986 directed that since the petitioner has retired from service and if penalty of reduction in pension by five percent of the full amount of pension admissible to the petitioner is imposed for a period of five years, provisions of Section 189-A of B.C.S.R. will be applicable.

2. The facts giving rise to this petition are as under:

2.1 The petitioner joined service as Clerk in the office of the Mamlatdar, Godhra under the erstwhile Bombay State Government with effect from 2.5.1947 and cleared sub-service Departmental Examination in 1950 and thereafter in the year 1956 he passed the Head Accountant's examination.

2.2 On bifurcation of erstwhile Bombay State into States of Maharashtra and Gujarat with effect from 1.5.1960, the petitioner had been allocated to Gujarat. He continued to work in the Mamlatdar Godhra Office and in District Government Treasury at Godhra upto October, 1961, between October 1961 and May 1967, he happened to work in relatively more responsible position as Deputy Accountant in Rajkot Treasury, Deputy Accountant in the Directorate of Accounts and Treasuries and Accountant in Baroda Treasury and as senior auditor in L.F. at Godhra.

2.3 The petitioner had been promoted in the Gujarat Accounts Service Class II with effect from 1.6.1967 and in that service he worked in various assignments upto February, 1980 such as Junior Assistant Examiner, Local Fund, Bulsar; Accounts Offices in Directorate of Transport; Accounts Officer, Deputy Director of Agriculture-Engineering, Baroda,; Additional Treasury

Officer, Baroda; Accounts Officer, S.S.C. Board, Gandhinagar.

2.4 In February, 1980 the petitioner had been elevated to the Gujarat Accounts Service Class I and he continuously held that rank upto the date of his retirement on superannuation that is 31.3.1986 during which period he held responsible position as Accounts Officer, Civil Hospital Ahmedabad from February, 1980 to June 1982 and Accounts Officer, Directorate of Geology and Mining from June 1982 to March, 1986.

2.5 As far as this matter is concerned, it is stated in this petition that the Director, Stock Holding and Central Medical Stores and Organisation, Ahmedabad, had entered into rate contract for supply of S.S. Brand Absorbent Bandage Cloth and S.S. Brand Absorbent Guaze of specified size to Civil Hospital, Ahmedabad with two firms, namely, M/s. Sterile Surgical Dressing, Ahmedabad and M/s. Rainbow Surgical Dressing Manufacturing Co., Ahmedabad for a period of two years from 1.1.1979 to 31.12.1980. According to the terms, 90 per cent of the payment was to be made against proof of despatch documents through a Scheduled Bank and balance 10 percent within thirty days after receipt of Stores in good condition. The rates settled were F.O.R. destination delivery basis inclusive of insurance charges. the petitioner has annexed necessary tender document along with this petition.

2.6 However, as regards mode of payment, there has been change in the terms and conditions under Medical Superintendent, Civil Hospital, Ahmedabad Memo No. MS/DRUG/SS/DMC/BXC-CI 37010 dated 26.11.1979. According to which the documents were to be obtained directly from the firm.

2.7 In this case around 15th November, 1979 the Superintendent, Civil Hospital, Ahmedabad, had placed an order with M/s. Sterile Surgical Manufacturing Co., Ahmedabad (one of the contracting firms) for supply of certain quantity of tendered materials worth Rs. 1,23,120/- (Rupees one lakh twenty three thousand one hundred and twenty). As against this the said firm had sent a proforma invoice on 19.11.1979 worth Rs. 1,25,357/- (Rupees one lakh twenty five thousand three hundred and fifty seven). Out of the invoiced goods, payment of part bill worth Rs. 37,748.21 had been made on or before 11.3.1980.

2.8 Similarly, the Medical Superintendent, Civil

Hospital, Ahmedabad, had placed an order around 5.3.1980 with M/s. Rainbow Surgical Dressing Manufacturing Co., Ahmedabad, for supply of dressing materials worth Rs. 45,900/- (Rupees forty five thousand and nine hundred) and accordingly the said firm had sent a bill on 6.3.1980 for a sum of Rs. 47,029.27. In all, there was aggregate amount of Rs. 84,777.48 as shown below:

Name of the party	Amount paid in Rupees.
1. M/s. Sterile Sugical Mfg. Co., Ahmedabad.	Rs. 37,748.21
2. M/s. Rainbow Surgical Dressing Mfg. Co., Ahmedabad	Rs. 47,029.27
Total	Rs. 84,777.48

(Rupees eighty four thousand seven hundred seventy seven and paise forty eight only)

2.9 It was an undisputed fact that payment of the aforesaid bills had not been made against proof of despatch documents. It is the case of Government that the petitioner along with other persons did not verify about the receipt of the goods and paid the amount in question to the two respective parties directly.

2.10 In view of the same the Government had instituted Departmental Enquiry as per Rule 13 of the Gujarat Civil Services (Discipline and Appeals) Rules, 1971. Pursuant to the report of the Departmental Enquiry Committee, it was found that the charges levelled against the petitioner was duly proved and in view of the fact that the petitioner has retired on 31.3.1986 the Finance Department had recommended five percent reduction in his pension for a period of five years and the said proposal of the Government dated 22.5.1986 was approved by the Government and ultimately the present order has been passed.

3. Mr. Brahmbhatt, learned counsel for the petitioner, has tried to assail the order of the Government on various grounds. However, the fact remains that payment has been made to two parties without verification and the Departmental Enquiry was instituted and the charges levelled against the petitioner were proved. These facts are admitted facts. The report of the Enquiry Officer has also been placed on record. The

Enquiry Committee by its report dated 29.10.1986 held that the charges levelled against the petitioner were proved. The petitioner was also given an opportunity to be heard. He has also filed his reply. Ultimately, the order has been passed.

4. I have gone through the record of the case. I have also considered the submissions made by Mr. Brahmbhatt, learned counsel for the petitioner. I have also heard the learned A.G.P. Mr. Sompura. The learned A.G.P. has tried to support the order of the Government. He has relied on Rule 189-A of the B.C.S.R. which reads thus:-

"Section 189-A - The Governor reserves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including services rendered upon re-employment after retirement."

4.1 The learned A.G.P. has further submitted that Rule 189-A of B.C.S.R. empowers the Government to recover from a pension of the whole or part of any pecuniary loss caused to Government provided the officer is found guilty of grave misconduct or negligence during the period of his service. He submitted that in this case the admitted facts are that as per the report of the Enquiry Officer the petitioner is found guilty of misconduct or negligence and therefore the order of Government withholding 5% of pension being clearly as per Rule 189-A of B.C.S.R. is legal and valid.

5. In view of certain admitted facts on the record and in view of the clear and cogent finding of the Enquiry Officer that the charges levelled against the petitioner were proved, in my view, it is not possible for this court to interfere with the order of the Departmental Enquiry Officer and the order of the Government awarding penalty of reduction of pension by five percent of the full amount of pension for a period of five years. In view of the same, the petition is rejected. Rule is discharged with no order as to costs.

(K.M. MEHTA, J)

(pkn)